which ordinarily would not be large enough to cause dispute about an *investment* of it. See even the recent case of *Honywood* v. *Honywood*, 43 L. J. Ch. 652 (1874); but any such statement of the law (which, in this case, was *obiter*), must now be considered as made subject to the very reasonable qualification which *Bateman* v. *Hotchkin* introduced.

F. J. B.

Baltimore.

Supreme Court of Indiana.

RICHARDSON *v.* SNIDER.

The party suing upon bills of exchange must show in his pleadings title in himself, and an averment that the plaintiffs "are successors in and to (payee's) business, *and as such* are the legal and *bona fide* holders of the bill of exchange," is not a sufficient allegation of title.

Where one partner retires, but the others continue to do business in the same firm name, the retiring partner is only obliged to give actual notice to parties with whom the firm has directly dealt.

This rule does not extend to require notice to the *successor in business* of a creditor with whom the firm has had dealings, although such successor may have been a clerk in his predecessor's employ, and as such acquired knowledge of who composed the other firm, and after his succession to the business may have continued to deal with the firm under the impression that the retired partner was still a member of it.

ACTION on bills of exchange and a book account. The case is sufficiently stated in the opinion.

McConnell & Tully, for appellant, cited Edwards on Bills and Notes, 2 ed., 237; *Archer* v. *Spencer*, 3 Blkf. 405; *Harter* v. *Ellis*, 6 Id. 154; Wade on Notice, sects. 502, 508–513; *Vernon* v. *Manhattan Co.*, 22 Wend. 183; *Clapp* v. *Rogers*, 12 N. Y. 283; *Wardwell* v. *Haight*, 2 Barb. S. C. 549; Parsons on Partnership 428.

Magee & Jacks, for appellees.

The opinion of the court was delivered by

ELLIOTT, J.—The first and second paragraphs of the complaint of the appellees are founded upon bills of exchange drawn by Louis Snider, and accepted by the firm of Smith & Hall, of which it is alleged all the appellants were members. Demurrers were unsuccessfully addressed to each of these paragraphs, and appellants complain of the action of the court in overruling them.

The contention of the appellants is, that the complaint does not show any title in the appellees to the bills of exchange sued on, and that no right in appellees to maintain an action thereon is shown by the complaint. The allegations of title are essentially the same in both paragraphs, and are as follows: That said Louis Snider is deceased, and that the appellees "are his successors in and to his business, and as such are the legal and *bona fide* holders of the bill of exchange." There is no allegation that Louis Snider was a partner of the appellees, nor is the claim of appellees based upon the ground that they are surviving partners.

It is a familiar rule of pleading that a complaint or declaration must show title: *Jaccard* v. *Anderson*, 32 Mo. 188; Stephens Pl. 87. The plaintiff, in an action upon a bill of exchange or promissory note, must show a right in himself to maintain an action thereon: *Archer* v. *Spencer*, 3 Blkf. 405; *Reed et al.* v. *Garr et al.*, 59 Ind. 299; *Barcus* v. *Evans*, 14 Id. 381; *Rousch* v. *Duff*, 35 Mo. 312.

The allegation in the complaint under examination is a peculiar one. It does assert, generally, that the appellees are the *bona fide* holders of the bill, but it expressly limits and restricts this general statement, by specifically showing that they are such holders, because they are the successors in business of Louis Snider. This is the only effect that can be given to the allegation that they are his successors in business, and as such, the holders of the bill. The ownership, they assert, is such, and such only, as the fact of their being the successors in business of Louis Snider confers upon them. The nature of their title is specifically stated, and the specific statement of title is the one which must govern: *Reynolds* v. *Copeland* (this term). The facts given as constituting the foundation of the claim of title are not sufficient to support it. A man, by becoming the successor in business of another, does not become the owner of bills of exchange of which that other died possessed. The facts, which affirmatively appear upon the face of the complaint, so far from showing title in the appellees, show that, in truth, they had none whatever. All that the allegations of the complaint upon this point substantively assert is, Louis Snider died the owner of the bills, and that the appellee succeeded to his business. In the form in which it is expressed, the statement that appellees are the owners, is merely a conclusion of law drawn by the pleader from the two facts, Snider's death and their succession to his business.

Clearly enough these facts do not warrant the conclusion of ownership by the appellees of the bills declared on. The demurrers ought to have been sustained.

The third paragraph of the complaint is upon an account for goods sold and delivered to the firm of Hall & Smith, of which all the appellants are alleged to have been members. Upon this paragraph of the complaint an instruction was based by the trial court of which the appellants, Richardson and Annabel, complain. By their motion for a new trial, by their assignment of errors, and in their brief, these appellants insist that the first instruction given to the jury was erroneous. In order that the force of the instruction complained of may be understood it is necessary to give a brief synopsis of the evidence touching the point upon which the instruction bears. Smith, Hall, Richardson and Annabel had been partners, but in November 1875 the partnership was dissolved, Richardson and Annabel retiring, and a notice of dissolution published in the newspapers, but the business was continued, without any change of the firm name, by Smith and Hall. The firm of Smith & Hall, prior to November 1875, had dealt with Louis Snider, but had never dealt with the firm of Louis Snider's Sons. Louis Snider was represented in his dealings with Smith & Hall prior to the withdrawal of Richardson and Annabel by some of the appellees, but they were not, however, associated with him as partners, but simply as agents. The goods described in the third paragraph were sold after the dissolution of the partnership which had existed between the appellants and the withdrawal of Richardson and Annabel from the firm of Smith & Hall. The instruction under mention is somewhat lengthy and confused, and it need not be copied, as the legal proposition which it asserts can be stated in a condensed form. It declares, in substance, that if any of the appellees, as agents of Louis Snider, had acquired knowledge from the dealings of Smith & Hall with Louis Snider that Richardson and Annabel were members of that firm, and goods were sold to said firm of Smith & Hall after the withdrawal of Richardson and Annabel, the latter were liable unless they had shown that the firm of Louis Snider's Sons had actual notice of the dissolution of the firm of Smith & Hall and the withdrawal of Richardson and Annabel. This instruction was erroneous. Richardson and Annabel were bound to give actual notice only to those with whom the firm of Smith & Hall had previously dealt. No dealings at all had ever been had by Smith &

Hall with the firm of Louis Snider's Sons, and the retiring partners were under no obligation to give them notice. It cannot be held that because some of the agents of Louis Snider knew who composed the original firm of Smith & Hall, that when they, the agents, established an entirely new firm they were entitled to notice of dissolution. Certainly this would not be seriously contended if the agents of Louis Snider had gone to some distant city and there formed a new partnership, and yet the principle is precisely the same. Nor could it be seriously insisted that each of the agents would have been entitled to actual notice if there had been a separation and each had gone into a new and distinct firm. The rule requiring notice to those with whom the firm has previously dealt does not require actual notice to be given to persons with whom the firm had never directly dealt, although such persons may have been the clerks or salesmen of one with whom the firm did have previous dealings. This must be the rule, or else it must follow that it would be the duty of persons retiring from a firm to give actual notice to clerks, salesmen, bookkeepers and every one else who had been in the service of one with whom the firm had previously dealt, and who had acquired knowledge through such service of the members of the partnership. The rule as to actual notice does not require that it shall be given to those who as agents represent the person with whom the firm deals, but that it shall be given to the principal. In no just sense can it be said that the dealing is with the agent, for the act of the agent is that of his principal.

Judgment reversed at costs of appellees.

I. It is a fundamental rule of pleading that the plaintiff must allege his title in his pleading to the chose in action: Stephen on Pleading 304.

The following allegations to show title to choses in action have been held good: That the note was payable to the order of A., the defendant, who endorsed it in blank and transferred it to the plaintiff: *Mitchell* v. *Hyde*, 12 How. Pr. 460; that the note was made by the defendant payable to his own order, and by him endorsed and delivered to one A. for a valuable consideration; and that the plaintiff is now the *bonâ fide* holder and owner of the same: *Holstein* v. *Rice*, 15 How. Pr. 1; that the defendant made the note whereby he promised to pay a certain sum to the plaintiff or his order, on demand, and delivered the same to plaintiff: *Niblo* v. *Harrison*, 7 Abt. Pr. 447; that the defendant made his note payable and delivered it to A., who thereupon endorsed the same to the plaintiff: *Appleby* v. *Elkins*, 2 Sand. S. C. 673; that the defendant made his note payable to the order of A., and the same "was duly endorsed by the payee and transferred to the plaintiff," and that thus the defendant was justly indebted to the plaintiff: *Taylor* v. *Corbiere*, 8 How. Pr. 385; "that the said note endorsed be-

fore the maturity thereof, and for value received, lawfully came into the possession of these plaintiffs:" *Lee* v. *Ainslie*, 4 Abt. Pr. 463; s. c., 1 Hilton 277; that the contract in writing became the property of the plaintiff by purchase: *Prindle* v. *Caruthers*, 15 N. Y. 425; s. c., 10 How. Pr. 33; that the defendant made and delivered the note to the payee, "who then and there endorsed it and delivered it so endorsed, and thereafter, and before maturity, the same came lawfully into the possession of these plaintiffs for value:" *Phelps* v. *Ferguson*, 19 How. Pr. 143; s. c., 9 Abt. Pr. 206; when the complaint furnishes a copy of the note sued on, it is not necessary to aver a delivery to the plaintiff, who is the payee: *LaFayette Ins. Co.* v. *Rogers*, 30 Barb. 491; that the defendant, by his note, promised to pay A., or order, and that the plaintiff, (B.,) "is now the lawful owner and holder of said note:" *Genet* v. *Sayre*, 12 Abt. Pr. 347; that the defendants drew the check sued on, and that it was afterwards transferred and delivered to the plaintiffs, whereby they became and are the owners thereof: *Mechanics' Bank* v. *Straiton*, 36 How. Pr. 190; in a suit against the maker of the note, a complaint that sets forth a copy, and alleges a sum due thereon from the defendant to the plaintiff, although the note is by its terms payable to a third person, and there is no allegation of an endorsement by him: *Continental Bank* v. *Bramhall*, 10 Bosw. 595; *Conkling* v. *Gandall*, 1 Keyes 228; in an action on a note against the maker, the complaint alleged several endorsements, but not one to the plaintiffs, but alleged that they "are now the lawful owners and holders" thereof, held good: *Reeve* v. *Fraker*, 32 Wis. 243; that the note was delivered to another for the plaintiff, and that it is held and owned by him is good: *Camden Bank* v. *Rodgers*, 4 How. Pr. 63; s. c., 2 Code R. 45; that the plaintiff the owner of the note and mortgage sued upon: *Rollins* v. *Forbes*, 10 Cal. 299.

In the following cases held to be insufficient to show title in plaintiff; that the plaintiff is the "lawful holder" of the note: *Beach* v. *Gallup*, 2 Code R. (N. Y.) Rep. 66; so setting forth only a copy of the note and endorsement, by which it does not appear that the plaintiff is a party either to the note or endorsements, and averring that the amount is due the plaintiff: *Lord* v. *Cheseborough*, 4 Sandf. 696; so an averment that the paper came into the hands of the plaintiff by purchase for value, and that he is now the legal owner and holder of it: *Burrall* v. *Bushwick Railroad Co.*, 75 N. Y. 218.

The decision of the New York courts was upon the 142d section of the Code, viz.: The complaint shall contain: "1. The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the plaintiff desires the trial to be had, and the names of the parties to the action, plaintiff and defendant. 2. A plain and concise statement of the facts constituting a cause of action without unnecessary repetition. 3. A demand of the relief to which the plaintiff supposes himself entitled. If recovery of money be demanded the amount thereof shall be stated."

II. Upon the question of the liability of a retiring partner to those who continue to deal with the firm without actual notice of his retirement, though the general principle is everywhere recognised, there is some discrepancy in its application to particular states of fact.

In *Lyon* v. *Johnson*, 28 Conn. 1, the defendants, &c., had been partners previous to March 1857, when they dissolved partnership and gave notice of such dissolution by publication in a newspaper of the town where they did business. One of the partners continued the business, and in the fall of 1857, bought coal of the plaintiffs, which the latter

sold, with no knowledge of the dissolution and on the credit of the partnership. The plaintiffs had sold coal in one instance to the defendants before dissolution, which was the only dealing that they had had with them, but the defendants had been regular customers of a firm which sold coal at the same place, *and to which the plaintiff had succeeded*, the former firm having consisted of one of the *plaintiffs*, and one A., and the present firm of the *same plaintiff*, and one B., who had for some years been a clerk of the former firm. It was held that the plaintiffs were to be regarded as having had "former dealings" with the defendants, and that they could be affected only by actual notice; also held that the lapse of time between the dissolution and the purchase of the coal—the fact that the plaintiffs were doing business in the same town with the defendants—and the fact that an advertisement of the plaintiffs stood next to the advertisement of the dissolution in the newspapers—although to be considered in determining whether the plaintiffs had actual notice, were of no avail in law against the fact that they had no actual knowledge of the dissolution. So where a partnership is dissolved by the voluntary act of the partners, and not by operation of law, reasonable notice must be given to the public, and until it is actually so given, the partner remains liable as such to any person, although not a former dealer with the firm, who may thereafter enter into a contract within the scope of the partnership business, with either of the partners in the name and upon the credit of the partnership, without actual knowledge of the dissolution. And it makes no difference that there has not been time to give such notice, or that for any reason it was not practicable to give it: *Morton* v. *Searles*, 28 Conn. 43; *Mechanics' Bank* v. *Livingston*, 33 Barb. 458. As to time to give notice see *Bristol* v. *Sprague*, 8 Wend. 423; *Wardwell* v. *Haight*, 2 Barb. 552.

In order to exonerate the members of a firm from liability upon a promissory note made in its name after its dissolution, by one of the partners for the accommodation of a third person, and taken in good faith and for value by one not a dealer with the firm, but having knowledge of its prior existence, and not of its dissolution, it is necessary that there should be actual notice to the party to be affected: *City Bank of Brooklyn* v. *McChesney*, 20 N. Y. 240; *Lovejoy* v. *Spafford*, 93 U. S. 430.

Subsequent dealers with the continuing firm without notice, who had no dealings with the old firm: *Shamburg* v. *Ruggles*, 83 Pa. St: 148; *Gaar* v. *Huggins*, 12 Bush 259; *Kennedy* v. *Bohannon*, 11 B. Mon. 119; *Treadwell* v. *Wells*, 4 Cal. 260; *Chamberlain* v. *Dow*, 10 Mich. 319; *Dickinson* v. *Dickinson*, 25 Gratt. 321; *Newcomet* v. *Bretzman*, 69 Pa. St. 785; *Ayrault* v. *Chamberlin*, 26 Barb. 89.

Liability of a retired partner to one dealing with the remainder of the firm and who had no notice of such retirement: *Parkin* v. *Carruthers*, 3 Esp. 248; *Williams* v. *Keats*, 2 Stark. 257; *Brown* v. *Leonard*, 2 Chitty 120; *Stables* v. *Eley*, 1 Car. & P. 614 (tort); *Farrar* v. *Deflinne*, 1 Car. & K. 580 (a dormant partner); *Evans* v. *Drummond*, 4 Esp. 89; *Carter* v. *Whalley*, 1 B. & Ad. 14; *Graham* v. *Hope*, Peake 154; *Johnson* v. *Totten*, 3 Cal. 343; *Williams* v. *Bowers*, 15 Id. 321; *Page* v. *Brant*, 18 Ill. 37; *Ennis* v. *Williams*, 30 Geo. 691; *Lowe* v. *Penny*, 7 La. Ann. 356; *Skannel* v. *Taylor*, 12 Id. 773; *Reilly* v. *Smith*, 16 Id. 31; *Zorlar* v. *Janvrin*, 47 N. H. 324; *Vernon* v. *Manhattan Co.*, 17 Wend. 524; *Conro* v. *Port Henry Iron Co.*, 12 Barb. 27; *Fettrech* v. *Armstrong*, 5 Rob. (N. Y.) 339; *Williams* v. *Birch*, 6 Bosw. 299; *Little* v. *Clarke*, 36 Pa. St. 114; *White* v. *Murphy*, 3 Rich. (S. C.) 369; *Hutchins* v. *Hudson*, 8 Humph. 426; *Kirkman* v. *Snodgrass*, 3 Head. 370; *Tudor* v.

White, 27 Tex. 584; *Prentiss* v. *Sinclair*, 5 Vt. 149; *Santherin* v. *Grein*, 67 Ill. 106; *Speer* v. *Bishop*, 24 Ohio St. 598; *Kenny* v. *Atwater*, 77 Pa. St. 34; *Carmichael* v. *Greer*, 55 Geo. 116; *Holtgreve* v. *Wintker*, 85 Ill. 470; *Austin* v. *Holland*, 69 N. Y. 571; *Freeman* v. *Falconer*, 12 J. & Sp. (N. Y.) 142; *Ex parte Burton*, 1 G. & J. 207; *Pratt* v. *Page*, 32 Vt. 13; *Ex parte Leaf*, 1 Deacon 176. W. W. T.

Supreme Judicial Court of Massachusetts.

JOHN OSBORNE *v.* CHARLES H. MORGAN ET AL.

A servant can maintain an action against a fellow-servant for an injury caused by the negligence of the latter while engaged in their common employment.

While it is true that if a servant wholly neglects to carry out his contract with his employer, he is liable to such employer only and not to third persons, yet if he once enter upon the duties of his employment he is personally liable to his fellow-servants for an injury caused by his leaving his work in a dangerous condition without proper safeguards. Such an act is misfeasance, and not nonfeasance.

A carpenter at work in the establishment of a manufacturing corporation was injured because of the negligence of employees of the corporation in leaving a tackle-block and chains in a dangerous position. *Held*, that he could maintain an action against such employees for damages.

Albro v. *Jaquith*, 4 Gray 99, overruled.

THIS case was heard in the court below upon a demurrer to a declaration in a suit by one workman against another to recover damages for an injury, caused by the negligence of the latter while both were engaged in a common employment. The court below sustained the demurrer. To this ruling plaintiff excepted.

The opinion of the court was delivered by

GRAY, C. J.—The declaration is in tort, and the material allegations of fact, which are admitted by the demurrer, are, that while the plaintiff was at work as a carpenter, in the establishment of a manufacturing corporation, putting up, by direction of the corporation, certain partitions in a room in which the corporation was conducting the business of making wire, the defendants, one the superintendent and the others agents and servants of the corporation, being employed in that business, negligently and without regard to the safety of persons rightfully in the room, placed a tackle-block and chains upon an iron rail suspended from the ceiling of the room, and suffered them to remain there in such a manner and so unprotected from falling that by reason thereof they fell upon and injured the plaintiff. Upon these facts the plaintiff